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14 WESTERN DISTRICT OF WASHINGTON  
15 AT TACOMA

16 AMY CURTIS,

17 Plaintiff,

18 v.

19 DEPARTMENT OF SOCIAL & HEALTH  
20 SERVICES, DIVISION OF CHILD  
21 SUPPORT, and ELLEN NOLAN, Program  
22 Administrator,

23 Defendants.

24 AMY CURTIS,

25 Plaintiff,

26 v.

27 DEPARTMENT OF LICENSING,

28 Defendant.

Case No. C08-5043RBL

Case No. C08-5277RBL

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1 her child support is being calculated. In C08-5043RBL plaintiff was granted leave to proceed *in forma*  
 2 *pauperis*. A review of the file indicates that defendants have not been served with a summons and copy of the  
 3 complaint as is required under Fed. R. Civ. P. 4.

4 The two complaints appear to arise under a common nucleus of operative facts and shall be  
 5 consolidated under C08-5043RBL. However, the basis for this Court's jurisdiction is not readily apparent  
 6 from the face of either of plaintiff's complaints. If plaintiff is asserting that her civil rights have been violated,  
 7 her claims would arise under 42 U.S.C. § 1983. In order to state a claim under 42 U.S.C. § 1983, a complaint  
 8 must allege that (1) the conduct complained of was committed by a **person** acting under color of state law and  
 9 that (2) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws  
 10 of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled on other grounds, *Daniels v.*  
 11 *Williams*, 474 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both  
 12 of these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9<sup>th</sup> Cir. 1985), cert. denied, 478  
 13 U.S. 1020 (1986).

14 Neither states nor state officials acting in their official capacities are persons for purposes of 42 U.S.C.  
 15 § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 48, 71 (1989). This rule applies equally to state  
 16 agencies. See *Kaimowitz v. Board of Trustees of the Univ. of Ill.*, 951 F.2d 765, 767 (7<sup>th</sup> Cir. 1991); *Johnson*  
 17 *v. Rodriguez*, 943 F.2d 104, 108 (1<sup>st</sup> Cir. 1991). Because they are not persons within the meaning of § 1983,  
 18 plaintiff has not stated a cause of action against the Department of Social and Health Services and the  
 19 Department of Licensing.

20 Plaintiff's claims against the state agencies are also barred by the Eleventh Amendment. The Eleventh  
 21 Amendment to the United States Constitution bars a person from suing a state in federal court without the  
 22 state's consent. See *Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114, 1131 (1996); *Natural Resources*  
 23 *Defense Council v. California Dep't of Transportation*, 96 F.3d 420, 421 (9<sup>th</sup> Cir. 1996). Eleventh  
 24 Amendment immunity extends to state agencies. *Pennhurst State Sch. & Hosp. v. Holdeman*, 465 U.S. 89,  
 25 101-102 (1984). Eleventh Amendment immunity is not automatically waived in actions brought under  
 26 42 U.S.C. § 1983. *Quern v. Jordan*, 440 U.S. 332 (1979). Washington has not waived the protection of the  
 27 Eleventh Amendment. *Edgar v. State*, 92 Wn.2d 217 (1979).

Therefore, within 30 days of entry of this Order plaintiff shall file an amended complaint under Case No. C08-5043RBL which clearly sets forth the basis of this Court's jurisdiction and includes all claims against all defendants arising from the alleged errors in calculating her child support obligations. **The failure to file an amended complaint within 30 days will result in the dismissal of this action.** If plaintiff files an amended complaint over which this Court has jurisdiction, the Court will issue a further Order directing the U.S. Marshal to serve the summonses and copies of the complaint. The Order Regarding Initial Disclosures, Joint Status Report and Early Settlement previously entered in C08-5043RBL [Dkt. #5] is hereby **STRICKEN**. If necessary, a new Order setting forth new dates will be entered. Plaintiff's Application to Proceed *In Forma Pauperis* filed in C08-5277RBL is **STRICKEN as MOOT**.

## IT IS SO ORDERED.

The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing pro se.

Dated this 5<sup>th</sup> day of June, 2008.

Ronald B. Leighton  
RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE